

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. TF-99-94
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**ORDER GRANTING INTERVENTIONS, MODIFYING COMMENT PERIOD,
AND WAIVING SETTLEMENT CONFERENCE**

(Issued June 25, 1999)

On March 26, 1999, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a proposed electric interruptible replacement rider, identified as TF-99-94. The proposed tariff would initially be implemented in the East system only, but MidAmerican said it intended to later extend the tariff to its entire system. MidAmerican said the proposed tariff fulfilled a commitment made in the settlement in Docket Nos. APP-96-1 and RPU-96-8 to develop an interruptible buy-through tariff.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) objected to the proposed tariff on April 23, 1999. Consumer Advocate argued interruptible rates provide discounts to customers willing to curtail electric usage during peak periods and that a tariff allowing an interruptible customer to purchase replacement power in effect nullifies the interruptible arrangement.

Counsel for Consumer Advocate and MidAmerican contacted counsel for the Board and said discovery was proceeding. The Board therefore docketed the

proposed tariff for investigation on April 23, 1999, but did not set a procedural schedule. Consumer Advocate and MidAmerican were ordered to file a joint report in 30 days detailing their progress in resolving some or all of the issues.

On May 17, 1999, MidAmerican and Consumer Advocate filed a proposed settlement. The settlement was signed on May 14, 1999. Four days before the proposed settlement was filed with the Board, on May 13, 1999, the Iowa Industrial Intervenors (III) filed a petition to intervene. Three days after the proposed settlement was filed, on May 20, 1999, Ag Processing Inc (Ag Processing) filed a petition to intervene.

In support of its petition to intervene, III stated its members (currently, the only listed member of III is Archer Daniels Midland Company) are major electric service customers of MidAmerican and may have interest in service pursuant to the proposed tariff. Ag Processing, in its petition to intervene, alleged similar interests.

MidAmerican filed a resistance to III's petition to intervene on May 24 and a resistance to Ag Processing's petition to intervene on May 27. With respect to III's petition, MidAmerican noted the only member of III is not located in the East system. Similarly, MidAmerican said Ag Processing is not located in the East system. Also, MidAmerican said as a matter of policy, MidAmerican and Consumer Advocate should not have to start over on a settlement that took several weeks to negotiate.

Ag Processing and III each filed a reply to MidAmerican's resistances on June 3, 1999. Ag Processing said it wanted to be able to take advantage of the proposed tariff but could not because as proposed it is limited to the East system. III

said while it is not in the East system, MidAmerican wants to extend the tariff to its entire system at some point. III also pointed out that its petition to intervene was filed within 20 days of the April 23, 1999, docketing order and was therefore timely.

MidAmerican filed responses to the resistances on June 18, 1999.

MidAmerican argued III and Ag Processing did not have sufficient interests to warrant intervention because the proposed tariff could not be extended outside the East system without Board approval. III filed a reply on June 22, 1999. III said MidAmerican should not be allowed to piece-meal tariff filings by system to avoid interventions.

The Board's rules have two categories of intervention: intervention of right and permissive intervention. IOWA ADMIN. CODE 7.2(7)"d"(1)-(2). Intervenor of right must have an interest in the subject matter of the proceeding and have unique interests that require representation in addition to existing parties. The rule states Consumer Advocate's role of representing the public interest "shall not be interpreted as representing every potential interest in a proceeding before the Board." For permissive intervention, the requirements are stricter and require the Board to consider, among other things, the effect of a decision upon the prospective intervenor's interest and the availability of other means by which the prospective intervenor's interest may be protected.

Although III and Ag Processing are not in the East zone, both have an interest in the proceeding because MidAmerican intends to extend the tariff to other zones at a later date. While Board approval will be required to extend the tariff, policy issues

surrounding the tariff will likely be decided in this docket. The Board finds both III and Ag Processing have an interest in this proceeding that is not represented.

Rule 7.2(8) provides that unless otherwise ordered by the Board, the request to intervene shall be filed within 20 days following an order setting a procedural schedule, but not afterward, unless good cause is shown. The rule gives the Board discretion to grant or deny the petition unless the person meets the criteria of intervention of right.

The Board's April 23, 1999, order docketing the tariff did not set a procedural schedule. However, persons reading the order were on notice that settlement of the case was a distinct possibility. The order reads as follows:

After completion of discovery, the parties intend to commence settlement negotiations in an attempt to resolve some or all of the issues. Therefore, the Board will docket the proposed tariff for investigation but will not set a procedural schedule. MidAmerican and Consumer Advocate will be required to file a joint report detailing their progress in resolving some or all of the issues. The Board will then determine what further proceedings, if any, are required.

III's petition to intervene, filed 20 days after this order, is timely. Ag Processing's order, filed more than 20 days after the order and after the proposed settlement was filed, raises questions of timeliness. In general, the Board believes that when persons are on notice that settlement discussions are taking place, they should not be allowed to wait until after an agreement is reached to intervene.

The absence of a procedural schedule or a date certain for intervention in the April 23, 1999, docketing order created confusion regarding the applicability of the

20-day intervention period in Rule 7.2(8). Because III's intervention was timely, allowing Ag Processing to participate will not further delay the proceedings. The Board will therefore exercise its discretion and grant both petitions to intervene.

However, to expedite the settlement review process the Board on its own motion will shorten the period for filing comments to the proposed settlement from 30 days to 15 days. IOWA ADMIN. CODE 199-7.2(11)"c." The period for reply comments will be seven days rather than 15. The Board will also on its own motion waive the requirement for a settlement conference. IOWA ADMIN. CODE 199-7.2(11)"b." All parties have received copies of the settlement. Because this is a settlement on a narrow tariff and not a settlement in a case involving numerous issues, such as a rate case, it is appropriate to shorten the comment period.

IT IS THEREFORE ORDERED:

1. The petitions to intervene filed by Iowa Industrial Intervenors and Ag Processing Inc are granted.
2. The time for filing comments in objection to the proposed settlement filed by MidAmerican and Consumer Advocate is 15 days from the date of this order.
3. The time for filing reply comments is seven days from the date comments in objection to the proposed settlement are due.

4. The requirement for a settlement conference contained in IOWA
ADMIN. CODE 199-7.2(11)"b" (1999) is waived.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of June, 1999.